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DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Nexstar Broadcasting Group, Inc., Mission Broadcasting, Inc., Communications Corporation of America and Silver Point Capital Fund, L.P.;

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Nexstar Broadcasting Group, Inc., Mission Broadcasting, Inc., Communications Corporation of America and Silver Point Capital Fund, L.P., Civil Action No. 1:14-cv-02007. On November 26, 2014, the United States filed a Complaint alleging that Nexstar's proposed acquisition of Communications Corporation of America (CCA), by the acquisition of control of WEVV-TV in Evansville, Indiana, would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Nexstar to divest WEVV-TV to Bayou City Broadcasting Evansville, Inc. or an alternative buyer approved by the United States.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW, Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be

obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Department of Justice, Antitrust Division's internet website, filed with the Court and, under certain circumstances, published in the Federal Register. Comments should be directed to Scott A. Scheele, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202-514-5621).

Patricia A. Brink,
Director of Civil Enforcement.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

NEXSTAR BROADCASTING GROUP, INC.,
545 E. John Carpenter Freeway, Suite 700
Irving, Texas 75062

Case: 1:14-cv-02007

MISSION BROADCASTING, INC.,
30400 Detroit Road
Westlake, Ohio 44145

COMMUNICATIONS CORPORATION
OF AMERICA,
700 Saint John Street, Suite 300
Lafayette, Louisiana 70501

and

SILVER POINT CAPITAL FUND, L.P.,
2 Greenwich Plaza, 1st Floor
Greenwich, Connecticut 06830

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Communications Corporation of America (CCA), a wholly-owned subsidiary of Silver Point Capital Fund, L.P.,

by Nexstar Broadcasting, Inc. (Nexstar) and Mission Broadcasting, Inc. (Mission) (Nexstar and Mission are referred to collectively as the Buyers), and to obtain other equitable relief. The transaction would likely lessen competition substantially in the sale of broadcast television spot advertising in the Evansville, Indiana Designated Marketing Area (DMA) of the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to a Stock Purchase Agreement dated April 24, 2013, Nexstar and Mission will acquire all of the issued and outstanding voting securities of CCA for \$270 million. Both Nexstar and CCA own or operate many broadcast television stations in multiple television DMAs across the United States. Through various local services agreements, Nexstar sells the advertising for all of the television stations owned by Mission, which Nexstar effectively controls.

2. In Evansville, Indiana, Nexstar owns and operates WEHT, an ABC broadcast network affiliate. As the owner-operator of that station, Nexstar sells WEHT's advertising. Pursuant to a local services agreement, Nexstar also sells the advertising of WTVW, a CW broadcast network affiliate in Evansville that is owned by Mission. Accordingly, WEHT and WTVW do not meaningfully compete with one another for advertisers.

3. In Evansville, CCA owns and operates WEVV, a CBS broadcast network affiliate. WEVV also operates a digital subchannel on which it runs television programming affiliated with the FOX broadcast network. Although Nexstar and Mission intend to transfer CCA's WEVV license to a related third party, the third party is expected to have Nexstar sell its advertising pursuant to a local services or similar agreement. Nexstar would likely have effective control of this third party as it does of Mission.

4. Currently, Nexstar (on behalf of WEHT and WTVW) and CCA (on behalf of WEVV) compete for the business of local and national advertisers that seek spot advertising on broadcast television stations in the Evansville, Indiana DMA. Advertisers benefit from this competition.

5. If consummated, Nexstar's acquisition of control of CCA's advertising would result in Nexstar controlling the sale of advertising for three out of four major broadcast network affiliates (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's already high market share of spot advertising in the DMA would increase from approximately 42 to 60 percent.

6. The transaction would eliminate head-to-head competition between Nexstar and CCA and all the benefits from this competition. Unless the transaction is blocked, it will lead to higher prices for broadcast television spot advertising in the Evansville, Indiana DMA in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. JURISDICTION AND VENUE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Nexstar and CCA sell broadcast television spot advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Nexstar transacts business and is found in the District of Columbia. Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in

this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c). Venue is also proper in the District of Columbia for defendant Nexstar under 28 U.S.C. 1391(d).

III. THE DEFENDANTS

10. Nexstar, a Delaware corporation with headquarters in Irving, Texas, owns or operates 72 broadcast television stations located in 41 DMAs in 18 states. Nexstar reported revenues of \$378 million for 2013.

11. Mission, a Delaware corporation with headquarters in Westlake, Ohio, owns 17 broadcast television stations. Nexstar receives substantially all of Mission's available cash and is deemed to have a controlling interest in Mission under generally accepted accounting principles. Accordingly, Mission's economic incentives are aligned with Nexstar's.

12. CCA, a Delaware corporation with headquarters in Lafayette, Louisiana, owns or operates 25 broadcast television stations in 10 DMAs throughout Louisiana, Texas, and Indiana. CCA reported revenues of \$98.3 million for 2012.

13. Silver Point Capital Fund, L.P., based in Greenwich, Connecticut, controls and is the ultimate parent entity of CCA.

IV. TRADE AND COMMERCE

A. Broadcast Television Spot Advertising Is a Relevant Product Market

14. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, mainly through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television "spot" advertising is sold directly by the station itself or through its national representative on a localized basis and is purchased by advertisers who want to target

potential customers in specific geographic areas. Spot advertising differs from network and syndicated television advertising, which are sold by the major television networks and producers of syndicated programs on a nationwide basis and broadcast in every geographic area where the network or syndicated program is aired.

15. Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular target geographic market and is therefore especially effective in introducing, establishing, and maintaining the image of a product or service. For a significant number of advertisers, broadcast television spot advertising, because of its unique attributes, is an advertising medium for which there is no close substitute. Advertisers generally do not consider other media, such as radio, newspapers, or outdoor billboards, to be desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

16. Like broadcast television, subscription television channels, such as those carried over cable or satellite television, combine elements of sight, sound, and motion, but they are not generally considered within the advertising industry as a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other subscription content delivery systems do not generally have the “reach” of broadcast television. Typically in the United States, broadcast television can reach well over 90% of homes in a DMA, while cable television often reaches fewer homes. Second, because subscription services may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast

television programming typically has higher rating points than subscription television programming, broadcast television is generally viewed as providing a much easier and more efficient means for an advertiser to reach a high proportion of its target demographic. Generally in the industry, media buyers purchase time on subscription television channels not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic (*e.g.*, 18–24 year olds) with greater frequency, or to target narrow geographic areas within a DMA.

17. Typically, advertisers do not consider internet-based media to be a substitute for broadcast television spot advertising. Although online video distributors (OVDs) such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. And non-video internet advertising (*e.g.*, website banner advertising) lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, the typical local media advertiser purchases internet-based advertising primarily as a supplement to broadcast television spot advertising.

18. Consequently, a small but significant increase in the price of broadcast television spot advertising is unlikely to cause a sufficient number of broadcast television spot advertising customers to switch enough of their advertising purchases to other media such that the price increase would be unprofitable.

19. The sale of broadcast television spot advertising is a line of commerce under Section 7 of the Clayton Act and a relevant product market for purposes of analyzing the proposed transaction under Section 7 of the Clayton Act.

B. The Evansville, Indiana DMA Is the Relevant Geographic Market

20. A Designated Marketing Area or DMA is a geographic unit defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. The Evansville, Indiana DMA encompasses 21 counties in Indiana, Kentucky, and Illinois. Signals from broadcast television stations located in the Evansville, Indiana DMA reach viewers located throughout the DMA, but signals from broadcast television stations located outside the DMA reach few viewers within the DMA. DMAs are used to analyze revenues and shares of broadcast television stations in the *Investing in Television BIA Market Report 2014* (1st ed.), a standard industry reference.

21. Advertisers use broadcast television stations within the Evansville, Indiana DMA to reach the largest possible number of viewers within the entire DMA. Some of these advertisers are located in the Evansville, Indiana DMA and need to reach customers there; others are regional or national businesses that want to target consumers in the Evansville, Indiana DMA. Advertising on television stations outside the Evansville, Indiana DMA is not an alternative for these advertisers because such stations cannot be viewed by the vast majority of potential customers within the DMA. Thus, if there were a small but significant increase in broadcast television spot advertising prices within the Evansville, Indiana DMA, advertisers would not switch enough advertising purchases to television stations outside the Evansville, Indiana DMA to render the price increase unprofitable.

22. The Evansville, Indiana DMA is a section of the country under Section 7 of the Clayton Act and a relevant geographic market for the sale of broadcast television spot

advertising for the purposes of analyzing the proposed transaction under Section 7 of the Clayton Act.

C. The Transaction Will Lead to Harm to Competition in the Evansville, Indiana DMA

23. Broadcast television stations compete for advertisers by offering programs that attract viewers to their stations. Broadcast television stations select programs that appeal to the greatest number of viewers and that differentiate their stations from other stations by appealing to specific demographic groups. Advertisers, in turn, are interested in using broadcast television spot advertising to reach a large audience, as well as to reach a high proportion of the type of viewers that are most likely to buy their products.

24. By virtue of its ownership and operation of WEHT and the existing local services agreement with Mission to sell the advertising of WTVW, Nexstar currently controls the advertising of two broadcast television stations in the Evansville, Indiana DMA. Post-transaction, the market would effectively become a duopoly, with Nexstar controlling the advertising of three of the four major network affiliates (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's market share of broadcast television spot advertising revenue in the Evansville, Indiana DMA would increase from 42 to 60 percent. A single television station would control the vast majority of the remaining 40 percent.

25. Using the Herfindahl-Hirschman Index (HHI), a standard measure of market concentration (defined and explained in Appendix A), the proposed transaction would increase substantially the already high concentration in the Evansville, Indiana DMA broadcast television spot advertising market. The post-transaction HHI would be approximately 5100, representing an

increase of about 1500 points. Under the *Horizontal Merger Guidelines* issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2500) with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

26. In the Evansville, Indiana DMA, Nexstar and CCA compete head-to-head against each other in the sale of broadcast television spot advertising and are close substitutes for a significant number of advertisers. Advertisers benefit from this competition. The proposed transaction would end this competition and thereby adversely affect a substantial volume of interstate commerce.

27. After the transaction, a significant number of Evansville, Indiana DMA advertisers would not be able to reach their desired audiences with equivalent efficacy unless they advertised on the television stations controlled by Nexstar. Advertisers would have available only one alternative broadcast channel. The transaction, therefore, will enable Nexstar unilaterally to raise prices. Given the structure of the Evansville, Indiana DMA, the economics of this industry suggest that the remaining major competitor will have substantial incentives to follow suit.

D. Entry

28. De novo entry into the Evansville, Indiana DMA is unlikely as the Federal Communications Commission (FCC) regulates entry through the issuance of broadcast television spectrum licenses, which are difficult to obtain. Even if a new license became available, commercial success would come, at best, over a period of many years. Thus, entry into the Evansville, Indiana DMA broadcast television spot advertising market would not be timely, likely, or sufficient to deter post-merger anticompetitive effects.

E. Absence of Efficiencies

29. Defendants cannot demonstrate cognizable, merger-specific efficiencies that are sufficient to reverse the anticompetitive effects of the proposed transaction.

V. VIOLATION ALLEGED

30. The United States hereby repeats and realleges the allegations of paragraphs 1 through 29 as if fully set forth herein.

31. The Buyers' proposed acquisition of CCA would likely lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following effects, among others:

- (a) Competition in the sale of broadcast television spot advertising in the Evansville, Indiana DMA would be lessened substantially;
- (b) Competition in the Evansville, Indiana DMA between Nexstar and CCA in the sale of broadcast television spot advertising would be eliminated; and
- (c) The prices for broadcast television spot advertising in the Evansville, Indiana DMA would likely increase.

VI. REQUEST FOR RELIEF

32. The United States requests:

- (a) That the Court adjudge the proposed transaction to violate Section 7 of the Clayton Act, 15 U.S.C. 18;
- (b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which CCA would be acquired by, acquire, or merge with the Buyers;

- (c) That the Court award the United States the costs of this action; and
- (d) That the Court award such other relief to the United States as the Court may deem just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

_____/s/_____
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Assistant Attorney General

_____/s/_____
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_____/s/_____
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Assistant Chief, Telecom & Media Section

Dated: November 26, 2014

APPENDIX A

Herfindahl-Hirschman Index

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Guidelines*. *See id.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

NEXSTAR BROADCASTING GROUP, INC.,
545 E. John Carpenter Freeway, Suite 700
Irving, Texas 75062

MISSION BROADCASTING, INC.,
30400 Detroit Road
Westlake, Ohio 44145

COMMUNICATIONS CORPORATION
OF AMERICA,
700 Saint John Street, Suite 300
Lafayette, Louisiana 70501

and

SILVER POINT CAPITAL FUND, L.P.,
2 Greenwich Plaza, 1st Floor
Greenwich, Connecticut 06830

Defendants.

Case: 1:14-cv-02007

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (United States), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (APPA or the Tunney Act), 15 U.S.C. 16(b)-(h), files this

Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Pursuant to a Stock Purchase Agreement dated April 24, 2013, Nexstar Broadcasting Group, Inc. (Nexstar) and Mission Broadcasting Inc. (Mission) will acquire all of the issued and outstanding voting securities of Communications Corporation of America (CCA) for \$270 million. Both Nexstar and CCA own or operate many broadcast television stations in multiple television Designated Marketing Areas (DMAs) across the United States. Through various local services agreements, Nexstar sells the advertising for all of the television stations owned by Mission, which Nexstar effectively controls.

In Evansville, Indiana, Nexstar owns and operates WEHT, an ABC broadcast network affiliate. As the owner-operator of that station, Nexstar sells WEHT's advertising. Pursuant to a local services agreement, Nexstar also sells the advertising of WTVW, a CW broadcast network affiliate in Evansville that is owned by Mission. Accordingly, WEHT and WTVW do not meaningfully compete with one another for advertisers.

In Evansville, CCA owns and operates WEVV, a CBS broadcast network affiliate. WEVV also operates a digital subchannel on which it runs television programming affiliated with the FOX broadcast network. Although Nexstar and Mission intend to transfer CCA's WEVV license to a related third party, the third party is expected to have Nexstar sell its advertising pursuant to a local services or similar agreement. Nexstar would likely have effective control of this third party as it does of Mission.

Currently, Nexstar (on behalf of WEHT and WTVW) and CCA (on behalf of WEVV) compete for the business of local and national advertisers that seek spot advertising on broadcast television stations in the Evansville, Indiana DMA. Advertisers benefit from this competition. If consummated, Nexstar's acquisition of control of CCA's advertising would result in Nexstar controlling the sale of advertising for three out of four major broadcast network affiliates (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's already high market share of spot advertising in the DMA would increase from approximately 42 to 60 percent. Thus, the transaction would eliminate head-to-head competition between Nexstar and CCA and all the benefits from this competition, leading to higher prices for broadcast television spot advertising in the Evansville, Indiana DMA in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The United States filed a civil antitrust Complaint on November 26, 2014, seeking to enjoin the proposed transaction. The Complaint alleges that the likely effect of this transaction would be to lessen competition substantially for broadcast television spot advertising in the Evansville, Indiana DMA in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in advertisers paying higher prices.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (Hold Separate Order) and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the transaction. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest WEVV located in the Evansville, Indiana DMA. Under the terms of the Hold Separate Order, Defendants are required to take certain steps to ensure that WEVV is operated as a competitively independent, economically viable, and ongoing business concern, that will remain independent and

uninfluenced by the consummation of the transaction, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Nexstar, a Delaware corporation with headquarters in Irving, Texas, owns or operates 72 broadcast television stations located in 41 DMAs in 18 states. Nexstar reported revenues of \$378 million for 2013. Mission, a Delaware corporation with headquarters in Westlake, Ohio, owns 17 broadcast television stations. Nexstar receives substantially all of Mission's available cash and is deemed to have a controlling interest in Mission under generally accepted accounting principles. Accordingly, Mission's economic incentives are aligned with Nexstar's.

CCA, a Delaware corporation with headquarters in Lafayette, Louisiana, owns or operates 25 broadcast television stations in 10 DMAs throughout Louisiana, Texas, and Indiana. CCA reported revenues of \$98.3 million for 2012. Silver Point Capital Fund, L.P., based in Greenwich, Connecticut, controls and is the ultimate parent entity of CCA.

The proposed transaction, as initially agreed to by Defendants, would lessen competition substantially in broadcast television spot advertising in the Evansville, Indiana DMA as a result of Nexstar's acquisition of CCA. This transaction is the subject of the Complaint and proposed Final Judgment filed by the United States on November 26, 2014.

B. Anticompetitive Consequences of the Proposed Transaction

1. The Relevant Product Market

The Complaint alleges that the sale of broadcast television spot advertising constitutes a relevant product market for analyzing this transaction under Section 7 of the Clayton Act.

Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, mainly through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising time to businesses that want to advertise their products to television viewers.

Broadcast television “spot” advertising is sold directly by the station itself or through its national representative on a localized basis and is purchased by advertisers who want to target potential customers in specific geographic areas. Spot advertising differs from network and syndicated television advertising, which are sold by the major television networks and producers of syndicated programs on a nationwide basis and broadcast in every geographic area where the network or syndicated program is aired.

Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular target geographic market and is therefore especially effective in introducing, establishing, and maintaining the image of a product or service. For a significant number of advertisers, broadcast television spot advertising, because of its unique attributes, is an advertising medium for which there is no close substitute. Advertisers generally do not consider other media, such as radio,

newspapers, or outdoor billboards, to be desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

Like broadcast television, subscription television channels, such as those carried over cable or satellite television, combine elements of sight, sound, and motion, but they are not generally considered within the advertising industry as a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other subscription content delivery systems do not generally have the “reach” of broadcast television. Typically in the United States, broadcast television can reach well over 90% of homes in a DMA, while cable television often reaches fewer homes. Second, because subscription services may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than subscription television programming, broadcast television is generally viewed as providing a much easier and more efficient means for an advertiser to reach a high proportion of its target demographic. Generally in the industry, media buyers purchase time on subscription television channels not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic (*e.g.*, 18–24 year olds) with greater frequency, or to target narrow geographic areas within a DMA.

Typically, advertisers do not consider internet-based media to be a substitute for broadcast television spot advertising. Although online video distributors (OVDs) such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. And

non-video internet advertising (*e.g.*, website banner advertising) lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, the typical local media advertiser purchases internet-based advertising primarily as a supplement to broadcast television spot advertising.

Consequently, a small but significant price increase in broadcast television spot advertising is unlikely to cause enough advertising customers to switch advertising purchases to other media to make the price increase unprofitable.

2. *The Relevant Geographic Market*

The Complaint alleges that the Evansville, Indiana DMA constitutes a relevant geographic market for purposes of analyzing this acquisition under Section 7 of the Clayton Act. A Designated Marketing Area or DMA is a geographic unit defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are used to analyze revenues and shares of broadcast television stations in the *Investing in Television BIA Market Report 2014* (1st ed.), a standard industry reference. The Evansville, Indiana DMA encompasses 21 counties in Indiana, Kentucky, and Illinois. Signals from broadcast television stations located in the Evansville, Indiana DMA reach viewers throughout the DMA, but signals from broadcast television stations located outside the DMA reach few viewers within the DMA.

Advertisers can use television stations in the DMA to target the largest possible number of viewers within the DMA. Some of these advertisers are located in the Evansville, Indiana DMA and are trying to reach consumers that live in the DMA; others are regional or national

businesses wanting to target consumers in the Evansville, Indiana DMA. Advertising on television stations outside each of the Evansville, Indiana DMA is not an alternative for either local, regional, or national advertisers, because signals from television stations outside of the DMA reach relatively few viewers within the DMA. Thus, advertising on those stations outside the Evansville, Indiana DMA does not reach a significant number of potential customers within the DMA.

Consequently, a small but significant increase in broadcast television spot advertising prices within the Evansville, Indiana DMA would not cause advertisers to switch enough advertising purchases to television stations outside the Evansville, Indiana DMA to render the price increase unprofitable.

3. *Harm to Competition in the Evansville, Indiana DMA*

The Complaint alleges that the proposed acquisition would likely lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and likely would have the following effects, among others:

- (a) competition in the sale of broadcast television spot advertising in the Evansville, Indiana DMA would be lessened substantially;
- (b) competition in the Evansville, Indiana DMA between Nexstar and CCA in the sale of broadcast television spot advertising would be eliminated; and
- (c) the prices for broadcast television spot advertising on broadcast television stations in the Evansville, Indiana DMA likely would increase.

By virtue of its ownership and operation of WEHT and the existing local services agreement with Mission to sell the advertising of WTVW, Nexstar currently controls the

advertising of two broadcast television stations in the Evansville, Indiana DMA. Post-transaction, the market would effectively become a duopoly, with Nexstar controlling the advertising of three of the four major network (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's market share of broadcast television spot advertising revenue in the DMA would increase from 42 to 60 percent. A single television station would control the vast majority of the remaining 40 percent.

Using the Herfindahl-Hirschman Index (HHI), a standard measure of market concentration (defined and explained in Appendix A to the Complaint), the proposed transaction would increase substantially the already high concentration in the Evansville, Indiana DMA broadcast television spot advertising market. The post-transaction HHI would be approximately 5100, representing an increase of about 1500 points. Under the *Horizontal Merger Guidelines* issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2500) with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

In the Evansville, Indiana DMA, Nexstar and CCA compete head-to-head against each other in the sale of broadcast television spot advertising. They are close substitutes for each other for a significant number of advertisers. Moreover, advertisers typically find it cost-effective to reach their target audience by buying time from multiple stations in a DMA. In negotiating rates with any one television station, advertisers benefit from competition between stations because they can put together an ad buy with the other stations in the DMA. The proposed transaction would end this type of competition between Nexstar and CCA and thereby adversely affect a substantial volume of interstate commerce. After the transaction, it is likely that a significant

number of Evansville, Indiana DMA advertisers would not be able to reach their desired audiences with equivalent efficacy unless they advertised on the television stations controlled by Nexstar. By leaving advertisers with only one alternative broadcast channel, the transaction will enable Nexstar unilaterally to raise prices. Given the structure of the Evansville, Indiana DMA, the economics of this industry suggest that the remaining major competitor will have substantial incentives to follow suit.

4. Lack of Countervailing Factors

The Complaint alleges that entry in the Evansville, Indiana DMA's broadcast television spot advertising market would not be timely, likely, or sufficient to prevent any anticompetitive effects. New entry is unlikely since any new station would require a Federal Communications Commission (FCC) license, which is difficult to obtain. Even if a new station became operational, commercial success would come over a period of many years. In addition, there are no merger-specific efficiencies that would alleviate the harm from the transaction.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the Evansville, Indiana DMA by establishing a new, independent, and economically viable competitor, which will maintain the status quo in the DMA. The proposed Final Judgment requires Defendants to divest the Divestiture Assets to Bayou City Broadcasting Evansville, Inc. (Bayou City), an acquirer selected by Defendants and approved by the United States, in a manner consistent with the Final Judgment and the Hold Separate Order in this case. If Bayou City is unable to complete the purchase, the Defendants would be required to divest the Divestiture Assets to another buyer, approved by the United

States in its sole discretion. Defendants are required to use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously as possible and in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market.

Because the transfer of the Divestiture Assets to Bayou City requires Federal Communications Commission (FCC) approval, Defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. The divestiture pursuant to this Section shall take place within five (5) calendar days of entry of the Final Judgment or within 90 days of the filing of the Complaint, whichever is later. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, or it becomes apparent that Bayou City is unwilling or unable to complete its purchase of the Divestiture Assets, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. The United States may, after three months, determine not to seek appointment of a trustee if it believes the circumstances warrant allowing the Defendants more time. Under such circumstances, however, the United States may, at any time, exercise its right to select a trustee for the Court to appoint. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the

divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in broadcast television spot advertising in the Evansville, Indiana DMA.

The proposed Final Judgment also bars Nexstar from reacquiring the Divestiture Assets for the ten-year period of the decree. Nexstar can only affiliate with either FOX or CBS (WEVV's current network affiliates) a year or more from the filing of the Complaint, contingent on the United States' approval in its sole discretion.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the

United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Scott A. Scheele
Chief, Telecom & Media Enforcement Section
Antitrust Division, U.S. Department of Justice
450 5th Street, N.W., Suite 7000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the contemplated transaction. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast television spot advertising in the Evansville, Indiana DMA. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, No. 13-cv-1236(CKK), 2014-1 Trade Cas. (CCH) ¶ 78,748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting court has broad discretion to review adequacy of relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965(JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable”).¹

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted

¹ The 2004 amendments to the APPA substituted “shall” for “may” in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to APPA review).

evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “*within the reaches of the public interest.*” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).² In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as

² *Cf. BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be

measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the APPA). The language wrote into the statute what Congress intended when it enacted the APPA in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F.

Supp. 2d at 11.³ A court may make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

_____/s/_____
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COUNSEL FOR PLAINTIFF UNITED STATES
 OF AMERICA

Dated: November 26, 2014

³ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Plaintiff,

Case: 1:14-cv-02007

v.

NEXSTAR BROADCASTING GROUP, INC.,
MISSION BROADCASTING, INC.,
COMMUNICATIONS CORPORATION
OF AMERICA, and
SILVER POINT CAPITAL FUND, L.P.,
Defendants.

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, having filed its Complaint on_____, and plaintiff and defendants Nexstar Broadcasting Group, Inc. (“Nexstar”); Mission Broadcasting, Inc. (“Mission”); Communications Corporation of America (“CCA”) and Silver Point Capital Fund, L.P., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires certain divestitures to be made for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. “Nexstar” means defendant Nexstar Broadcasting Group, Inc., a Delaware corporation with its headquarters in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Mission” means defendant Mission Broadcasting, Inc. a Delaware corporation with its headquarters in Westlake, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “CCA” means Communications Corporation of America, a Delaware corporation headquartered in Lafayette, Louisiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Silver Point” means Silver Point Capital Fund, L.P, a Delaware limited partnership headquartered in Greenwich, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Acquirer” means BCBE, or another entity to which the defendants divest the Divestiture Assets.

F. “BCBE” means Bayou City Broadcasting Evansville, Inc., a Delaware corporation headquartered in Boston, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. “WEVV-TV” means the broadcast television station located in the Evansville, Indiana DMA owned by defendant CCA operating on virtual Channel 44.

H. “Divestiture Assets” means all of the assets, tangible or intangible, used in the operation of WEVV-TV, including, but not limited to, all real property (owned or leased) used in the operation of the station, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of the station; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission (“FCC”) and other government agencies related to that station; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases

and commitments and understandings of defendant CCA relating to the operation of WEVV-TV; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to WEVV-TV; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by defendant CCA in connection with WEVV-TV.

I. “DMA” means designated market area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing In Television BIA Market Report 2014* (1st ed.). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers and advertising agencies to aid in evaluating television audience size and composition.

III. Applicability

A. This Final Judgment applies to Nexstar, Mission, CCA, and Silver Point as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the defendants' Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to the Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed to divest the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion, in a manner consistent with this Final Judgment and the Hold Separate Stipulation and Order in this case. The divestiture

pursuant to this Section shall take place within ninety (90) calendar days after the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of this time period not to exceed thirty (30) calendar days, and shall notify the Court in such circumstances. Defendants shall use their best efforts to accomplish the divestiture ordered by this Final Judgment as expeditiously as possible, including using their best efforts to obtain all necessary FCC approvals as expeditiously as possible.

B. In the event that defendants are attempting to divest the assets to an Acquirer other than BCBE, in accomplishing the divestiture ordered by this Final Judgment,

- (1) Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;
- (2) Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;
- (3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine; and
- (4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable

the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any employee of any defendant whose primary responsibility is the operation or management of the Divestiture Assets.

D. Defendants shall permit the Acquirer of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of WEVV-TV; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing commercial television broadcasting business and the divestiture of such assets

will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

- (1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the television broadcasting business in the Evansville, Indiana DMA; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If either (a) the defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), or (b) the defendants have reason to believe that BCBE may be unable to complete the purchase of the Divestiture Assets, defendants shall notify the United States of that fact in writing.

B. If (a) the defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), or (b) the United States decides in its sole discretion that BCBE is likely to be unable to complete the purchase of the Divestiture Assets, upon application of the United States in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

C. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to

accomplish the divestiture to an Acquirer, and in a manner, acceptable to the United States in its sole discretion at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment and contact information for the trustee.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The trustee shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the

divestiture and the speed with which it is accomplished, but timeliness is paramount. If the trustee and Defendants are unable to reach agreement on the trustee's compensation or other terms and conditions within fourteen (14) calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After his or her appointment, the trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture have not been accomplished, and (3) the trustee's recommendations. To the extent that such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

I. If the United States determines that the trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States, in its sole discretion, shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Paragraph V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by

this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period.

B. Each such affidavit shall also include a description of the efforts defendants have taken to complete the sale of the Divestiture Assets – including efforts to secure regulatory approvals – and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

C. Within twenty (20) calendar days of the filing of the Complaint in this matter, each defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Each such affidavit shall also include a description of the efforts defendants have taken to complete the sale of the Divestiture Assets,

including efforts to secure FCC or other regulatory approvals. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

D. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

- (1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody or control of defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

A. Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirer with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of

this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude defendants from entering into any non-sales-related shared services agreement that is approved in advance by the United States in its sole discretion.

B. Notwithstanding any prohibition in this section, Defendants may acquire an affiliation with the FOX or CBS broadcast networks serving the Evansville, Indiana DMA during the period of this Final Judgment only if all of the following conditions are met:

- (1) at least one year has elapsed from the date of the filing of the Complaint in this matter;
- (2) Defendants notify the Department of Justice in writing of their intention to acquire the FOX or CBS affiliation in Evansville; and
- (3) the Department of Justice acting in its sole discretion gives its approval for the Defendants to acquire the FOX or CBS affiliation in Evansville.

Within ten (10) business days of receiving notice from the Defendants, the Department will respond in writing giving its approval or requesting additional information from the Defendants.

Within fifteen (15) business days of receiving the requested additional information, the Department will respond in writing either giving or withholding its approval.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of
Antitrust Procedures and Penalties Act,
15 U.S.C. 16

United States District Judge